

FOR PUBLICATION

ORIGINAL ACTION NO. 02-003-OA

IN THE SUPREME COURT OF THE  
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

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TERESITA PAULIS,

Petitioner,

v.

SUPERIOR COURT OF THE  
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,

Respondent,

GREGORIO NGIRAUSUI,

Real Party in Interest.

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SMALL CLAIMS NO. 94-1352

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**ORDER DENYING PETITION FOR WRIT OF PROHIBITION**

Cite as: *Paulis v. Superior Court*, 2004 MP 10

Argued on June 18, 2003

Decided June 8, 2004

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BEFORE: MIGUEL S. DEMAPAN, Chief Justice, JESUS C. BORJA, Justice *Pro Tempore*,  
FRANCES TYDINGCO-GATEWOOD, Justice *Pro Tempore*

DEMAPAN, Chief Justice:

¶1 Petitioner Teresita Paulis (“Paulis”) challenges the actions of the Superior Court in enforcing her debt judgment. Specifically, Paulis seeks the prohibition of: (1) the entry of any order that compels judgment debtors in civil cases to register or report to the Division of Employment Services or otherwise seek, obtain or continue employment for the purpose of being able to pay off the judgment; (2) the use of “FORM Sup. Ct. 02-008,” a check-box form the Superior Court uses to explain a judgment debtors’ responsibilities under orders in aid of judgment issued by the court; (3) the entry of contempt orders in civil debt cases based on the debtor’s voluntary unemployment; (4) commitment to jail for a specified term for civil contempt without listing a specific purge clause in the commitment order; (5) the entry of criminal contempt orders without providing constitutional protections; and (6) the entry of arrest and commitment orders in civil debt cases. Since Paulis has not adequately shown that she is entitled to the extraordinary remedy of writ of prohibition, the Court denies the Petition.

¶2 Paulis bought certain goods on credit while residing in the Republic of Palau. The store owner sought to collect the debt, and on April 10, 1985, the Court of Common Pleas in the Republic of Palau entered a \$743.55 judgment against Paulis. The Palau court also ordered her to pay the judgment at the rate of \$100.00 a month. She did not comply with the payment schedule.

¶3 Later, Paulis left Palau and moved to the Commonwealth of the Northern Mariana Islands (“CNMI”). Real-Party-in-Interest Gregorio Ngirausui (“Ngirausui”) filed suit against Paulis in the CNMI on the Palau judgment.

¶4 On August 26, 1994, the Superior Court entered a default judgment in favor of Ngirausui and against Paulis for \$241.44. On September 15, 1994, Paulis stipulated to an order requiring her to

pay \$25 a month on the judgment. Then on September 19, 1994, the Superior Court entered an Order in Aid of Judgment to this effect.

¶5 Paulis only made one \$25.00 payment pursuant to the Order. As a result, Paulis was ordered to appear before the Superior Court on December 12, 1995 to show cause why she should not be held in contempt for violating the terms of the Order in Aid of Judgment. Paulis did not appear at the hearing. Consequently, a bench warrant was issued for Paulis' arrest.

¶6 The warrant was executed on September 18, 1996. A relative posted \$100.00 bail for her release. Paulis appeared before the Superior Court on September 24, 1996. At this hearing, Paulis testified that she failed to make payments because she was unemployed. She further stated that she had been unemployed since 1992 and that she was not seeking employment. She also told the judge that she supported herself and her five grandchildren with food stamps.

¶7 In an order entered September 27, 1996, the Superior Court declined to find Paulis in contempt. However, the court continued the case for another hearing on October 15, 1996. The order provided that Paulis need not appear at this hearing if, prior to the hearing, she provided Ngirausui's attorney with a letter from a medical doctor justifying her inability to work. At the October 15, 1996 hearing, Paulis produced a letter from a physician who examined her on October 1, 1996. The doctor diagnosed Paulis as having probable fibromyalgia and concluded that she could indeed work if limited to performing light work duties.

¶8 As a result of Paulis' failure to make court-ordered payments, a contempt hearing was held on January 13, 1997. Paulis appeared without representation of counsel. She told the court that she was unable to make payments as a result of her inability to collect a \$10,000.00 debt owed to her.

¶9 The Superior Court found Paulis in contempt for violating the order of September 19, 1994 that directed Paulis to pay \$25.00 a month in satisfaction of the judgment. In an order dated January

14, 1997, the court sentenced Paulis to three days in jail and suspended the execution of the sentence on condition that she make payments of \$25.00 a month.

¶10 Subsequently, Paulis made only one payment. Upon Ngirausui's application, the court issued a Commitment Order, which was executed on November 7, 2000. Paulis served three days in jail from November 7, 2000 to November 10, 2000.

¶11 On June 3, 2002, Paulis again appeared before the Superior Court for a contempt hearing. At this hearing, just as at the previous hearings, Paulis was not represented by counsel. She testified that she was not employed, that she had not been employed since 1990, that she supported her grandchildren, that she lived in government-subsidized housing, that she supported her family with food stamps, and that she was unable to work because she was sick. Paulis failed to produce any documentary evidence of her infirmity.

¶12 The Superior Court found that Paulis had the ability to comply with the order directing Paulis to make the \$25 payments. The court further found that Paulis wilfully failed to comply. Consequently, the court found Paulis in contempt.

¶13 The court sentenced Paulis to jail for five days, suspending the execution of the sentence on condition that Paulis utilize her best efforts to obtain gainful employment, including registering with the Division of Employment Services. The court continued the case to July 31, 2002, when Paulis was to provide documentary evidence as to her compliance with the court's order.

¶14 The Superior Court gave Paulis a pre-printed form that explained the court's order. The top of the form listed when Paulis' next hearing would be. The court checked a box next to an instruction directing Paulis to report to the Division of Employment Services to seek assistance for immediate job placement.

¶15 Paulis now seeks a writ of prohibition from this Court challenging the actions the Superior

Court has taken in enforcing her judgment. Six days after Paulis filed this Petition, the Superior Court, upon Ngirausui's motion, vacated all post-judgment orders in this matter, without prejudice.

¶16 The justiciability question must be addressed as a threshold matter since Paulis is no longer subject to the post-judgment orders of which she complains in her Petition because the Superior Court has vacated all of these orders. The Court finds that even though it would normally consider the issues as moot, the situation presented here is excepted from the mootness doctrine because it is capable of repetition yet evading review. Further, this Court is equally disturbed at Ngirausui's purposeful attempt to avoid review of the issues presented to this Court.

¶17 The duty of the Court is to "decide actual controversies by a judgment which can be carried into effect, and not to give opinions on moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter at issue in the case at bar." *In re Seman*, 3 N.M.I. 57, 64 (1992) (citing *Govendo v. Micronesian Garment Mfg., Inc.*, 2 N.M.I. 270, 281 (1991)). Given that Paulis is no longer imprisoned or subject to any orders in aid of judgment, the mootness principle would normally preclude consideration of the merits of Paulis' Petition.

¶18 However, when the issue raised effects the public interest, and it is likely that similar issues arising in the future would likewise become moot before this Court can make a determination, there is an exception to the mootness rule. *Id.* at 64-65. Additionally, the Court has an interest in preventing litigants from attempting to manipulate its jurisdiction to insulate their actions from review, which weighs against a finding of mootness. *City of Erie v. Pap's A.M.*, 529 U.S. 277, 287, 120 S. Ct. 1382, 1390, 146 L. Ed. 2d 265, 276-77 (2000).

¶19 Here, the widespread practices of the Superior Court in enforcing judgment debts are a matter of public interest. This is not an isolated practice that only applies to the parties in this case, but rather it applies to all civil judgment debtors in the Commonwealth. Indeed, it is commonly

known that the Superior Court utilizes a pre-printed form to expedite its processing of such cases, as was used in the case at bar. The widespread nature of the actions taken by the Superior Court suggest that the same issues are capable of repetition.

¶20 The timing of Ngirausui's request to have all post-judgment orders vacated in this case is highly suspect. The fact that Ngirausui vigorously pursued collection of Paulis' debt for eight years and then proceeded to ask the Superior Court to vacate all post judgement orders almost immediately after the filing of this appeal strongly suggests that Ngirausui is trying to avoid review of the debt collection practices at the Superior Court. Consequently, it is likely that in the future such issues will become moot before this Court has a chance to rule upon them. In addition, this obvious attempt to manipulate the Court's jurisdiction compels us to find that this Petition is not barred by the mootness doctrine.

¶21 Although we find that the mootness doctrine does not bar consideration of the petition, we must now consider whether Paulis is entitled to the specific and extraordinary remedy of a writ of prohibition. We find that she is not entitled to this extraordinary remedy because she has failed to demonstrate that the conditions necessary for the issuance of a writ are present in this situation.

¶22 Section 3102(b) of Title 1 of the Commonwealth Code provides that "[t]he Supreme Court has original jurisdiction but not exclusive jurisdiction to issue writs of mandamus . . . and all other writs or orders necessary and appropriate to the full exercise of its appellate and supervisory jurisdiction." 1 CMC § 3102(b). A writ of prohibition is a drastic remedy that will not be granted except to confine an inferior court to the exercise of its prescribed jurisdiction. *Feliciano v. Superior Court (In re Estate of Hillblom)*, 1999 MP 3 ¶ 3 (citing *Tenorio v. Superior Court*, 1 N.M.I. 1 (1989)). The issue before us is not whether the Superior Court was in error, "but whether the [Superior Court's rulings were] so far afield that a writ [], rather than appeal, is a permissible method

of review.” *Feliciano*, 1999 MP 3 ¶ 23. In determining whether to issue a writ, we are guided by the five factors set out in *Tenorio*:

1. The party seeking the writ has no other adequate means, such as direct appeal, to attain the relief desired;
2. The petitioner will be damaged or prejudiced in a way not correctable on appeal;
3. The lower court's order is clearly erroneous as a matter of law;
4. The lower court's order is an oft-repeated error, or manifests a persistent disregard of applicable rules; and
5. The lower court's order raises new and important problems, or issues of law of first impression.

*Feliciano*, 1999 MP 3 ¶3 n.2 (citing *Tenorio*, 1 N.M.I. 1, 9 (1989)).

¶23 In applying the guidelines to a particular case, there will not always be a bright-line distinction. *Tenorio*, 1 N.M.I. at 10 (citing *Bauman v. United States Dist. Court*, 557 F.2d 650, 655 (9th Cir. 1977)). The guidelines themselves often raise questions of degree such as how clearly incorrect the lower court's order is or how severe a damage will petitioners suffer if extraordinary relief is withheld. *Id.* The considerations are cumulative, and proper disposition will often require a balancing of conflicting indicators. *Id.*

¶24 This Petition fails to meet the burden necessary to justify extraordinary relief. When we apply the facts of this case to the guidelines listed above, the totality of the circumstances here do not warrant our employment of the drastic writ remedy.

¶25 The first factor cuts against granting the writ because Paulis had other adequate means of attaining the relief she now requests. When the trial court issued the orders that Paulis is challenging in her petition, nothing prevented her from appealing these orders at that time. She could have stayed her jail sentences while the appeal is pending. However, we note that Paulis was not represented by counsel at the hearings and may not have known of her right to appeal or obtain a stay. The trial court, in the interests of fairness, should advise unrepresented litigants in situations similar to Paulis’ of their right to appeal or obtain a stay and also of the availability of free legal

advice at Micronesian Legal Services Corporation or at the Public Defender's office. Yet, Paulis has not pointed to anything in the record that shows that the trial court did not urge Paulis to seek counsel or that the court failed to advise her that she could appeal or stay the orders against her. Neither has she provided transcripts of the hearings at issue here to illustrate this lack of advice.

¶26 Similar reasons explain why the second factor weighs against issuance of a writ here as well. If we do not grant Paulis' petition, she will suffer no prejudice, as she can appeal any orders the trial court issues in the future. This situation does not feature the special circumstances where a direct appeal is ineffective for obtaining relief such that the Court must take the extraordinary step of issuing a writ. Here, Paulis should have appealed the orders from which she wished to obtain relief, and she is able to appeal any such orders in the future.

¶27 Additionally, it was not clear error for the trial court to issue the orders against Paulis. She first argues that the orders against her violated her rights to privacy and liberty under the Commonwealth and United States Constitutions. Given that Paulis' brief on this point is unclear, we find that the trial court was not clearly erroneous in this respect.

¶28 Paulis next argues that since the trial court suspended her second jail sentence on the condition that Paulis use her best efforts to find work, this contempt order violated the ban on involuntary servitude in the United States Constitution. There is a nagging question, however, as to whether suspending a contempt order on condition that one utilize best efforts to find a job in the modern economy present in the CNMI is clearly akin to the antebellum slavery contemplated by the Thirteenth Amendment. Certainly if Paulis wished to switch employers to obtain a better job, she would not be prevented by physical force from doing so. Moreover, Paulis has pointed to no explicit authority whereby the requirement to register with a governmental employment services agency constitutes unlawful involuntary servitude under the Thirteenth Amendment. These holes in Paulis'

argument prevents a finding of clear error.

¶29 Paulis also contends that the trial court violated Commonwealth statutory law, namely, 7 CMC § 4206, which states:

[An] order in aid of judgment may provide for the transfer of particular assets at a price determined by the court, or for the sale of particular assets and payment of the net proceeds to the creditor, or for payments, in specified installments on particular dates or at specified intervals, or for any other method of payment which the court deems just.

7 CMC §4206(b). Paulis claims that ordering her to seek work is not authorized by this statute. Yet, in its order in aid of judgment, the trial court ordered Paulis to make \$25 monthly payments, something that is explicitly authorized by this statute. It was in the subsequent contempt order that the court gave Paulis a chance to avoid jail by seeking work, not in the order in aid of judgment.

¶30 Paulis next argues that she had no ability to comply with the orders in aid of judgment and therefore should not have been found in contempt. However, there is evidence in the record before us that the court did make a determination of her ability to comply with the orders. Paulis was instructed to obtain a doctor's determination of her ability to work, which she obtained. The doctor found that Paulis had probable fibromyalgia but could do light work. In addition, Paulis has not pointed to the transcript of the contempt hearings to illustrate for us how there was no determination of Paulis' ability to pay. In fact, Paulis has not even provided transcripts of those hearings, in violation of Commonwealth Rule of Appellate Procedure 10(b). The transcripts are essential in order for us to make a determination in Paulis' favor. Moreover, Paulis did not even provide copies of the orders themselves in her excerpts of record. Consequently, it is impossible to find clear error on this point.

¶31 Paulis also contends that she was sentenced to a determinate jail sentence without a purge clause for civil contempt in violation of her constitutional rights as outlined in *Hicks v. Feiock*, 485

U.S. 624, 108 S. Ct. 1423, 99 L. Ed. 2d 721 (1988). It is true that *Hicks* states that if a jail sentence for contempt is determinate, the sentence is criminal in nature and cannot be imposed without the proper constitutional rights, such as the right to be represented by counsel, being afforded to the defendant.

¶32 However, in the present situation the sentence was civil in nature because it was imposed pursuant to the Commonwealth's civil contempt statute, which automatically inserts a purge clause into Paulis' sentence. Section 4208 of Title 7 of the Commonwealth Code provides:

If any debtor fails without good cause to comply with any order in aid of judgment made under this chapter, the debtor may be adjudged in contempt as a civil matter, after notice to show cause why the debtor should not be so adjudged and an opportunity to be heard thereon, and upon such adjudication shall be committed to jail until the debtor complies with the order or is released by the court or serves a period fixed by the court of not more than six months in jail, whichever happens first.

7 CMC § 4208. Under this statute, if a judgment debtor violates an order in aid of judgment, she may be committed to jail until she complies with the order or serves out her sentence. The fact that the debtor may spring herself upon compliance with the order in aid of judgment provides a purge clause for every contempt order issued under this statute for violation of orders in aid of judgment. Hence, a contempt order sentencing a debtor to jail for a fixed amount of time of not more than six months contains an automatic purge clause whereby the debtor can avoid jail by complying with the order in aid of judgment.

¶33 Here, the court issued an order in aid of judgment against Paulis requiring her to make \$25 monthly payments on the judgment. She did not comply with that order. Thus, she was found in contempt and sentenced to jail. However, according to 7 CMC § 4208, quoted above, Paulis could have avoided the jail sentence entirely by complying with the order in aid of judgment by paying \$25 per month. Consequently, her contempt was civil in nature and did not require the constitutional safeguards she now demands. The trial court was not in clear error in sentencing her to jail for a

fixed period of time.

¶34 Paulis also contends that the trial court clearly erred in sentencing Paulis to jail for non-payment of a debt when the common law rule in the United States is that such imprisonment for debt is unlawful. Paulis correctly states that under 7 CMC § 3401, the common law of the United States applies in the Commonwealth, absent any written law to the contrary. Therefore, she concludes, since there is no written law in the Commonwealth allowing imprisonment for debt, the trial court clearly erred in sentencing her to jail for contempt upon non-compliance with the order in aid of judgment.

¶35 There are two reasons why the trial court is not in clear error here. First, it is not entirely clear that there is no written law to the contrary in the Commonwealth. Section 4208, quoted above, explicitly authorizes imprisonment for contempt upon non-compliance with an order in aid of judgment. Second, even if the Court decided to adopt the common law rule against imprisonment for debt, it is not clear that Paulis was imprisoned here for her debt or for her willful violation of the order in aid of judgment. Therefore, on this point, the trial court was not in clear error.

¶36 As the Court stated in *Tenorio*, the lack of clear error on the part of the trial court is “substantially persuasive in itself” to require denial of a writ petition. 1 N.M.I. at 12-13. Consequently, since the trial court is not in clear error here, we are required to deny Paulis’ petition. Since the Court in *Tenorio* saw no need to discuss the remaining factors after making the determination that there was no clear error, we shall not discuss the remaining factors as well.

¶37 Because an analysis of the factors articulated in *Tenorio*, 1 N.M.I. at 9-10, weigh against issuing the writ of prohibition in this case, Paulis’ petition must be denied.

¶38 Accordingly, Paulis’ Petition is DENIED.

SO ORDERED this 8th day of June 2004.

/s/

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MIGUEL S. DEMAPAN, Chief Justice

/s/

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FRANCES TYDINGCO-GATEWOOD, Justice *Pro Tempore*

/s/

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JESUS C. BORJA, Justice *Pro Tempore*